

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID ZIMAND

Plaintiff,

- against -

FASHIONISTO LLC

Defendant.

Docket No. 18-cv-6065

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff David Zimand (“Zimand” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Fashionisto LLC (“Fashionisto” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Bar Rafael and Adi Ezra. The photograph is owned and registered by, Zimand a professional photographer. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Zimand is a professional photojournalist having a usual place of business at 280 E. 10<sup>th</sup> St., Apt. 29, New York, NY 10009-4806.

6. Upon information and belief, Fashionisto is a limited liability company duly organized and existing under the laws of New York State with a place of business at 244 5th Ave Suite B284, New York, New York 10001.

7. Upon information and belief, Fashionisto is registered with the New York Department of State, Division of Corporations to do business in the State of New York.

8. At all times material hereto, Defendant has owned and operated the website at the URL: [www. fashiongonerogue.com.com](http://www.fashiongonerogue.com.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

9. Zimand photographed Bar Rafael and Adi Ezra (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Zimand is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

11. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA u1-206-111, effective as of March 11, 2015 (the “428 Registration”). A true and correct copy of the 428 Registration is attached hereto as Exhibit C.

12. The title of the Photograph as it appears on the 428 Registration is “Bar Rafael and Adi Ezra.”

#### **B. Defendant’s Infringing Activities**

13. On or about March 11, 2015, Defendant ran an article entitled Bar Refaeli is Engaged (the “Article”).

14. Defendant’s Article prominently featured the Photograph. Screenshots of the Article as it appears on the Website are attached hereto as Exhibit B.

15. Defendant did not license the Photograph from Plaintiff for its Article.

16. Defendant did not have Plaintiff’s permission or consent to publish the Photograph on its Website.

17. Prior to publishing the Photograph on its Website, Defendant did not communicate with Plaintiff.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST FASHIONISTO)**  
(17 U.S.C. §§ 106, 501)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Defendant infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

20. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

21. Upon information and belief, the foregoing acts of infringement by Defendant have been willful and in reckless disregard of Plaintiff’s rights.

22. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

23. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

24. Plaintiff is further entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CMI be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant CMI be ordered to remove the Photograph from its Website;
3. That Plaintiff be awarded statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
July 2, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz  
Richard Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, NY 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff David Zimand*